

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**ACADIA INSURANCE COMPANY**  
**as Subrogee of St. Paul Street, LLC**  
**1 Acadia Commons**  
**Westbrook, ME 04908**  
**Plaintiff**

v.

**CIVIL ACTION NO. 04-12557 WGY**

**NER CONSTRUCTION MGMT., INC.**  
**867 Woburn Street**  
**Wilmington, MA 01887**  
**Defendant**

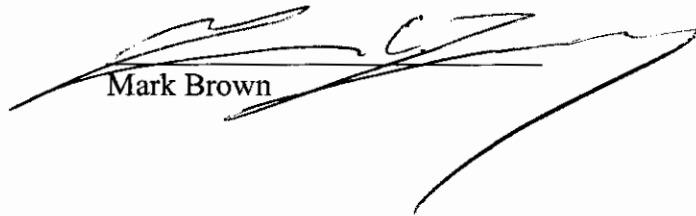
**Affidavit of Mark Brown**

Now comes Mark Brown and swears under the pains and penalties of perjury that the following statements are made of his own personal knowledge and are true:

1. My name is Mark Brown and I am the corporate safety officer for the defendant, NER Construction Management, Inc. (NER). The Defendant, NER, has a valid defense to this complaint as they were not negligent, did not breach any warranties and did not contribute to or cause the fire in question.
2. I have a Bachelor of Science degree in Occupational Safety.
3. I have a number of certifications from OSHA in construction safety and the use of hazardous materials. I have taken courses on fire science, fire investigation and I have been trained to investigate accidents.
4. I have 10 years of experience working as a construction safety officer.
5. I responded to the scene of the fire which is complained of in the Plaintiff's complaint within two days of the fire. I conducted a thorough investigation on site to determine what had occurred, whether NER was at fault and to determine the cause of the fire.
6. There were no NER personnel on the job site on the day of the fire.
7. NER did not store any flammable materials on the job site.

8. The report of the Brookline Fire Department listed the cause on the fire as undetermined after investigation.
9. On the date of the fire, there were other tradesmen working at the job site at or about the time the fire started including, on information and belief, employees of the General Contractor .
10. Upon information and belief, tradesmen who were not employed by NER were using equipment on site which produced ignition sources, including equipment used for welding, torches used for cutting and soldering equipment.
11. My investigation revealed that NER was not negligent in the performance of their duties at the site and did not cause or contribute to the fire in question.
12. All of the allegations contained in paragraph 16, 17, 18 and 19 are false.
13. It is my opinion that the fire in question was started by one of the tradesmen on site on the date of the fire, probably while using equipment which produced an ignition source.

Signed on the pains and penalties of perjury this fifth day of July, 2005.

  
Mark Brown